

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

319P0094

## HOUSE BILL NO. 1139

Introduced by: Representatives Feinstein, Ahlers, Cutler, Engels, Gillespie, Gosch, Hunt, Lust, and Nygaard and Senators Turbak Berry and Heidepriem

1 FOR AN ACT ENTITLED, An Act to revise certain provisions of the South Dakota Business  
2 Corporations Act regarding the issuance of shares and cumulative voting for directors.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 47-1A-621 be amended to read as follows:

5 47-1A-621. The powers granted in this section to the board of directors may be reserved to  
6 the shareholders by the articles of incorporation.

7 ~~No corporation may issue stocks or bonds except for money, labor done, or money or~~  
8 ~~property, tangible or intangible, actually received.~~ The board of directors may authorize shares  
9 to be issued for consideration consisting of any tangible or intangible property or benefit to the  
10 corporation, including cash, promissary notes, services performed, contracts for services to be  
11 performed, or other securities of the corporation. Before the corporation may issue shares, the  
12 board of directors shall determine that the consideration received or to be received for shares  
13 to be issued is adequate. ~~That~~ The determination by the board of directors is conclusive insofar  
14 as the adequacy of consideration for the issuance of shares relates to whether the shares are  
15 validly issued, fully paid, and nonassessable. When the corporation receives the consideration



1 for which the board of directors authorized the issuance of shares, the shares issued therefore  
2 are fully paid and nonassessable.

3 The corporation may place in escrow any shares issued for a contract for future services or  
4 benefits or a promissory note, or make other arrangements to restrict the transfer of the shares,  
5 and may credit distributions in respect of the shares against their purchase price, until the  
6 services are performed, the note is paid, or the benefits received. If the services are not  
7 performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted  
8 and the distributions credited may be cancelled in whole or part.

9 Section 2. That § 47-1A-728 be amended to read as follows:

10 47-1A-728. Unless otherwise provided in the articles of incorporation, directors are elected  
11 by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which  
12 a quorum is present. Shareholders may cumulate their votes for directors. However,  
13 shareholders may not cumulate their votes for director if the articles of incorporation include  
14 a statement that cumulative voting for directors is not allowed. The right to cumulate votes for  
15 directors means that the shareholders are entitled to multiply the number of votes that they are  
16 entitled to cast by the number of directors for whom they are entitled to vote and cast the  
17 product for a single candidate or distribute the product among two or more candidates.

18 Section 3. The provisions of Section 1 of this Act are effective on the date that Article XVII,  
19 section 8, of the South Dakota Constitution is repealed pursuant to the general election of 2008.

20 Section 4. The provisions of Section 2 of this Act are effective on the date that Article XVII,  
21 section 5, of the South Dakota Constitution is repealed pursuant to the general election of 2008.